

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA, as subrogee of
STATION CASINOS, LLC, et al.,

Case No. 2:15-CV-2140 JCM (PAL)

ORDER

Plaintiff(s),

v.

ANDREA ENGLAND DUKE,

Defendant(s).

Presently before the court is plaintiffs Travelers Property Casualty Company and Station Casino's motion for default judgment against defendant Andrea England Duke. (ECF No. 12).

Default judgment is appropriate "when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise. . . ." Fed.R.Civ.P. 55(a). Federal Rule of Civil Procedure 55(b)(2) provides that "a court may enter a default judgment after the party seeking default applies to the clerk of the court as required by subsection (a) of this rule." Fed.R.Civ.P. 55(b)(2).

Obtaining a default judgment is a two-step process: "first, the party seeking a default judgment must file a motion for entry of default with the clerk of a district court by demonstrating that the opposing party has failed to answer or otherwise respond to the complaint, and, second, once the clerk has entered a default, the moving party may then seek entry of a default judgment against the defaulting party." *See UMG Recordings, Inc. v. Stewart*, 461 F. Supp. 2d 837, 840 (S.D. Ill. 2006). Where a party has not been properly served, there is no basis for a court to enter default judgment. *See Fairly v. Potter*, 2003 WL 402261, *4 (N.D. Cal. 2003).

1 The choice whether to enter a default judgment lies within the discretion of the trial court.
 2 *Aldabe v. Aldabe*, 616 F.3d 1089, 1092 (9th Cir. 1980). In the determination of whether to grant
 3 a default judgment, the trial court should consider the seven factors articulated in *Eitel v. McCool*,
 4 782 F.2d 1470, 1471-72 (9th Cir. 1986). These factors are: (1) the possibility of prejudice to
 5 plaintiff if default judgment is not entered, (2) the merits of the claims, (3) the sufficiency of the
 6 complaint, (4) the amount of money at stake, (5) the possibility of a dispute concerning material
 7 facts, (6) whether default was due to excusable neglect, and (7) the policy favoring a decision on
 8 the merits. *Id.* In applying these *Eitel* factors, “the factual allegations of the complaint, except
 9 those relating to the amount of damages, will be taken as true.” *Geddes v. United Fin. Group*, 559
 10 F.2d 557, 560 (9th Cir. 1977); *see* Fed. R. Civ. P. 8(d).

11 On November 9, 2015, plaintiffs served the summons and complaint on defendant. (ECF
 12 No. 3). Defendant failed to appear or otherwise respond to the complaint. Accordingly, plaintiffs
 13 filed a motion for entry of clerk’s default (ECF No. 10), and the clerk entered default against
 14 defendant. (ECF No. 11).

15 Plaintiffs have properly complied with Federal Rule of Civil Procedure 55. Therefore, the
 16 court finds good cause to grant the motion for default judgment.

17 Accordingly,

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that plaintiffs’ motion for
 19 default judgment, (ECF No. 12), be, and the same hereby is, GRANTED.

20 IT IS FURTHER ORDERED that plaintiff shall prepare and file an appropriate judgment
 21 for the court’s signature within seven (7) days of this court’s order.

22 DATED June 1, 2016.

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 UNITED STATES DISTRICT JUDGE